

# **EXHIBIT E**

Affidavit of Herman J. Russomanno

**AFFIDAVIT OF HERMAN J. RUSSOMANNO**

My name is Herman J. Russomanno. I am an attorney licensed to practice law in the State of Florida and I am the senior partner in the law firm of Russomanno & Borrello, P A. Since 1986, I have been a Board Certified Civil Trial Lawyer in the State of Florida as well as Board Certified by the National Board of Trial Advocacy. I served as past chair of the Florida Bar's Civil Trial Certification Committee and I have been re-certified as a specialist in civil trial law in 1991, 1996, 2001, 2006 and 2011. In addition to being admitted to practice in the State of Florida since 1977, I am also admitted in the State of Alabama as well as the United States Supreme Court; United States Court of Appeal for the Eleventh Circuit; United States Court of Appeal for the Fifth Circuit; United States District Courts for the Southern, Middle and Northern Districts of Florida; United States District Court for the Southern District of Alabama.

I graduated from Rutgers University, Magna Cum Laude and Phi Beta Kappa. I graduated from Samford University - Cumberland School of Law in Birmingham, Alabama, in 1975. Following graduation, I was a Law Clerk for the Honorable Daniel H. Thomas of the U.S. District Court in Mobile, Alabama. From 1976 to 1977, I was a Law Clerk for Associate Justice Hugh Maddox of the Alabama Supreme Court. I am a Fellow of the American College of Trial Lawyers, the International Academy of Trial Lawyers, and the International Society of Barristers. I am the immediate past President of the Roscoe Pound Civil Justice Institute and the Immediate Past President of the International Academy of Trial Lawyers. In 2000, I served as President of the Florida Bar and have also served on the Board of Governors of the Florida Bar. I serve on the Board of Governors for the American Association for Justice and I serve on the Board of Directors for the Florida Justice Association. I am a member of the ABA House of Delegates and have served on the ABA Committee on Professionalism and served on the ABA Ethics Commission 20/20.

From 1983 to 1984, I was the President of the Dade County Bar Association, Young Lawyers Section. From 1990 to 1991, I was the Dade County Trial Lawyers Association President and from 1993 to 1994, I was the President of the Dade County Bar Association. In 2001, I was the President of the American Board of Trial Advocates - Miami Chapter. I served as the President of The Florida Board of Trial Advocates (FLABOTA). I am a past President of The Florida Supreme Court Historical Society. I was recognized by FLABOTA as the outstanding trial lawyer in 2001 in the state of Florida. I received the Pursuit of Justice Award from the ABA Tort and Insurance Practice Section, the BJ. Masterson Award for Professionalism from the Academy of Florida Trial Lawyers, and the Chief Justice Harry Lee Anstead Professionalism Award from the Dade County Trial Lawyers Association. In 2004, I received the David Dyer Professionalism Award. Additionally, I have worked as in-house counsel for Southern Bell Telephone from 1977 to 1980. Thereafter, I was a named partner in the law firm of Floyd, Pearson, Richman, Greer, Weil, Brumbaugh & Russomanno, P.A. In August of 1996, I established the firm of Russomanno & Borrello, P.A.

I have lectured to attorneys and corporations on a variety of insurance related subjects throughout the United States before groups such as the Association of Trial Lawyers of America, the American Bar Association, the National Business Institute, the Academy of Florida Trial

Lawyers, The Florida Bar, the Dade County Bar Association, the Dade County Trial Lawyers Association, and the American Board of Trial Advocates. I have also been an adjunct law faculty member at St. Thomas University School of Law teaching trial advocacy since 1987.

I have almost 40 years of experience as a trial lawyer and have handled hundreds of cases involving catastrophically injured plaintiffs, including brain injured clients.

In May, 2010, we obtained an \$11.5 million verdict in Miami-Dade County, Florida, on behalf of a former Miami Dolphins Wide Receiver, Otis J. McDuffie, against the Miami Dolphins' former team physician arising from the alleged failure of the team physician to properly diagnose and treat a toe injury that lead to the player's premature ending of his NFL career.<sup>1</sup> In the course of that representation, my firm, including my partner, Robert J. Borrello, became familiar with issues of preemption and the NFL's collective bargaining agreement.

My partner, Robert J. Borrello, was admitted to the Florida Bar in 1988 and has been practicing in all areas of civil litigation in federal and state courts, including personal injury, medical malpractice, and complex commercial litigation and appeals for 28 years. He graduated from University of Miami law school in 1988 cum laude, was an editor of the law review, and an honors graduate from Georgetown University in 1985. In addition to being admitted to the Florida Bar, he is admitted to the United States Court of Appeal for the Eleventh Circuit; United States District Courts for the Southern; Middle and Northern Districts of Florida.

In the wake of this result, my firm was contacted by Jason Luckasevic and Jack Tierney of Goldberg, Persky & White in October 2010 to discuss our firm's involvement in litigation against the NFL. Robert Borrello and I spent significant legal time reviewing and analyzing the potential claims against the NFL, including performing literature and article searches pertaining to helmet injuries and safety and concussions, conferring with Mr. Luckasevic and Mr. Tierney about the claims, reviewing draft lawsuits setting forth the claims, researching the issues of preemption and reviewing the CBA, researching the statutes of limitations and conflict of laws related thereto, and analyzing potential legal forums in which the claims could and should be filed. In the course of our analysis, it became apparent that California may provide a venue. Therefore, in March of 2011, I contacted my friend and fellow in the International Academy of Trial Lawyers, Tom Girardi, a California lawyer, to discuss his becoming part of the team with our firm and Jason Luckasevic's firm regarding the case against the NFL.

We then began the process of communicating to Mr. Girardi and his firm the analysis that had already been performed on the potential claims and the legal issues related to them.

Tom Girardi's firm, along with Jason Luckasevic and my firms, filed the first complaint against the NFL, Maxwell v. NFL, in Los Angeles Superior Court on July 19, 2011. On August 3, 2011, our team filed the second complaint, Pear v. NFL in the same court totaling over 100 chronically brain injured retired players. After filing the second complaint, the NFL removed the cases to Federal Court. Our firms collectively worked on and filed a Motion to Remand the cases. My firm assisted in reviewing and editing the briefing filed on the remand issues.

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<sup>1</sup> The verdict was later set aside by the trial judge and his decision affirmed by the appellate court. The case is pending re-trial.

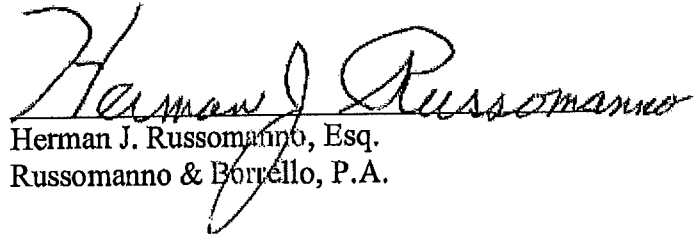
The NFL then filed a Motion to Dismiss based on preemption. Jason Luckasevic's office took the lead on drafting of the response to the motion. My firm also edited and reviewed the response.

From October 2010 through January 2012, three attorneys at my firm worked on this case. The attorneys' hourly rates are as follows: Herman J. Russomanno \$800; Robert J. Borrello \$600; Herman J. Russomanno III \$450. During this time, I spent approximately 350 hours working on this case; Robert Borrello spent 800 hours; and Herman J. Russomanno III spent 100 hours.

The work consisted of the above efforts, but also included numerous phone calls and meetings regarding creating a strategy to beat the NFL. Thus, as a team, we spent hundreds of hours coordinating and coming up with a game plan to the NFL's ever changing steps.

My firm's efforts for the period of 16 months prior to Feb 2012 involved taking a huge risk in suing the entire NFL, exerting substantial amount of time to understand the case, review papers, research laws, etc. amounts to \$805,000.

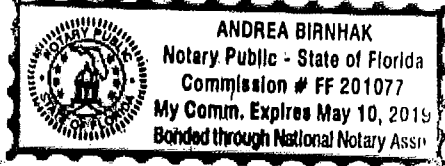
Further Affiant sayeth naught.

  
Herman J. Russomanno, Esq.  
Russomanno & Borrello, P.A.

**ACKNOWLEDGMENT**

STATE OF FLORIDA                    )  
  ) ss  
COUNTY OF MIAMI-DADE        )

SWORN TO AND SUBSCRIBED before me this 30th day of August, 2016.



Andrea Birnhak  
Notary Public, State of Florida

My Commission Expires:

\_\_\_\_\_ I personally know the Affiant.

✓ The Affiant showed Drivers License as personal identification.